

CITY OF SAN JOSE
Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, CA 95113-1905
tel (408) 535-3555 fax (408) 292-6055
Website: www.sanjoseca.gov/planning

NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER PD12-027		RECEIPT # _____	
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX) MND		AMOUNT \$100	
		DATE 10/9/12	
		BY MD	
TO BE COMPLETED BY PERSON FILING APPEAL			
PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.			
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION: PD12-027			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.): SEE ATTACHED			
PERSON FILING APPEAL			
NAME BRIAN BURKE		DAYTIME TELEPHONE (408) 377-0928	
ADDRESS 4144 WHITE OAKS AVE		CITY SAN JOSE, CA	STATE 95124
SIGNATURE [Signature]		DATE 10/9/12	
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME			
ADDRESS		CITY	STATE ZIP CODE
DAYTIME TELEPHONE ()	FAX NUMBER ()	E-MAIL ADDRESS	

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

Summary

The addition of almost 400 cars in and around Union Avenue and Barrett Avenue during the AM hour will create a significant negative effect on the environment that is not mitigated with the Mitigated Negative Declaration (MND).

CEQA provides that a MND is lawful only when “*clearly* no significant effect on the environment would occur, and ... there is *no* substantial evidence, in light of the whole record” that such impacts may follow project approval, taking into account adopted mitigation measures. (Pub. Resources Code § 21080 subd.(c) (emphasis added); Guideline § 15064, subd.(f).) CEQA requires an agency to prepare an EIR whenever a project “*may* have a significant impact on the environment.” (Pub. Resources Code § 21151, subd.(a), emphasis added.) There is a “low threshold requirement for initial preparation of an EIR [which] reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted.” (*League for Protection of Oakland’s Architectural etc. Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 905.) Here, area residents have pointed out the deficiencies in the MND and have provided sufficient substantial evidence of potential traffic impacts such that an EIR should be prepared for this Project.

The MND is inadequate and incomplete because it:

- a. Used incorrect data
- b. Undercounted cars
- c. Did not include 100 staff trips in counts (table 6 of TIA)
- d. Effectively ignores the D- and F Level of Service (LOS) at Camden Ave and Interstate 85 respectively, which will create a negative effect on the residential streets in the Cambrian neighborhood.
- e. Doesn’t prohibit the use of residential streets by buses, carpools, parent trips even though 98% of students come from outside the neighborhood, impacting the neighborhood
- f. Doesn’t require the use of, nor specify, approved primary traffic arteries for buses, carpools, parent trips

MND & TDM lack specificity required

In addition the MND and TDM doesn’t clearly outline how the effect will be mitigated it only sets a goal based on driveway counts. Since it is easy for cars to use adjacent residential streets to avoid entering and exiting the driveway, the proposed mitigation of working with neighborhood groups to introduce traffic calming devices to reduce proposed increases to traffic on residential streets and to monitor via driveway counts is too vaguely described in the MND. The efficacy of such a plan is therefore, unknown, and there may be remaining potential impacts. Area neighbors have commented about their first hand observations of potential traffic impacts on residential streets surrounding the Project. Deferring identification of mitigation measures to future study cannot support a finding that a significant impact is mitigated to a less than significant level, because mitigation remains uncertain. In *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, a county required hydrological studies as conditions of a use

permit, specifying that any mitigation measures suggested by the studies would become requirements of the permit. The Court held that unspecified future mitigation based on a future study was improper.

Non response from the Harker School

Pam Dickinson, Director of Communications at Harker School has failed to respond to email correspondence sent Wednesday, October 3rd and Friday, October 5th regarding meeting to discuss planned mitigation. After committing to meet in correspondence sent Tuesday, October 2 her lack of response to two subsequent emails calls into question the willingness of the Harker School to meet their obligations to meet with and work with the neighbors to ensure traffic intrusion and environmental impact to the neighborhood is minimized. Attached is the email correspondence.

Subject: Re: An Invitation from Harker
From: Brian Burke (burkebnc@pacbell.net)
To: pamd@harker.org;
Date: Friday, October 5, 2012 1:37 PM

Pam,

I missed the meeting Wednesday but understand the permit was approved, so, I want to personally welcome you to the neighborhood. Please pass on my welcome to Chis as well since I don't have his email address.

We were pleased that the TDM included adjustments which, if implemented appropriately, will address some of our concerns about neighborhood intrusion and traffic patterns. There are other issues yet unresolved where the group will continue to push for change.

Again, welcome to the neighborhood and I look forward to working with you to ensure our neighborhood streets remain primarily for local traffic.

Thank you.

Brian

From: Pam Dickinson <pamd@harker.org>
To: Brian Burke <BURKEBNC@PACBELL.NET>
Sent: Tuesday, October 2, 2012 6:36 PM
Subject: Re: An Invitation from Harker

Sounds good, Brian, and let's talk tomorrow or I'll email you this week and we'll get it set up!

Pam Dickinson, Director
Office of Communication
The Harker School

From: Brian Burke <BURKEBNC@PACBELL.NET>
To: Pam Dickinson <pamd@harker.org>
Subject: Re: An Invitation from Harker


Pam,

Sorry for the delayed response, I was on the road through last night and don't normally check personal email when traveling.

We would be happy to meet with you to discuss our concerns and how together we can resolve them. We'll keep our group to a minimum, likely four, maybe five people.

The only request we have is that legal counsel not be present. We would like to have a dialogue on the major issues, not draft a contract, that can come later.

Meeting at one of your campuses is fine, just let us know which one.

I look forward to hearing from you and if you need to reach me quickly, it's best by cell. 408-464-0424 .

Thanks.

Brian

On Sep 28, 2012, at 2:47 PM, Pam Dickinson wrote:

Hi, Brian!

I'm following up on our conversation at City Hall this week about getting together to discuss the issues. We'd like to extend an invitation to meet with you and a handful of the neighbors to sit down and review the issues, brainstorm and discuss possible solutions. We're very committed to being good neighbors, and this may help us all best move forward and establish ongoing dialogue.



Let us know when you're back in town and what day and time might work best for you and some of the group. Maybe a group of 3-6 would be good, and we can meet on one of our campuses or at a place of your choice.

I look forward to hearing from you!

Pam Dickinson, Director
Office of Communication
The Harker School

Est. 1893 | K to 12 College Prep | San Jose, CA

<http://www.harker.org/> | K through Life

pamd@harker.org | Office 408.345.9273  | phone | Fax 408.985.1391 .

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<u>PD12-027</u>			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):			
<u>The environmental Determination is incomplete. See attached</u> <u>for comments</u>			
PERSON FILING APPEAL			
NAME <u>Aine O'Donovan</u>		DAYTIME TELEPHONE <u>(408) 888 1752</u>	
ADDRESS <u>4471 Tomrick Ave</u>		CITY <u>San Jose</u>	STATE <u>CA</u> ZIP CODE <u>95124</u>
SIGNATURE <u>Aine O'Donovan</u>		DATE <u>10/9/12</u>	
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME _____			
ADDRESS _____		CITY _____	STATE _____ ZIP CODE _____
DAYTIME TELEPHONE ()	FAX NUMBER ()	E-MAIL ADDRESS <u>aine_odonovan @</u> <u>yahoo.com</u>	

TO: City of San Jose Planning Dept.
FROM: Aine O'Donovan

RE: PD12-027 Harker School Campus on Union Ave.
SUBJ: Environmental Appeal of IS & MND

DATE: October 9, 2012

I respectfully submit this Appeal of CSJ's Environmental Determination for PD12-027. The reason I wish to appeal this Environmental Determination is that the document is incomplete. All of the issues specified below have been previously raised during the City's Approval process, both in writing and as public testimony. I submitted written public comment on September 24, 2012 via email. I spoke at the Director's Public Hearing on September 26, 2012 and on October 3, 2012, and also submitted written material during these Hearings. The Environmental Determination is incomplete because:

- A. **NO data** is provided for the traffic impact to Barrett Ave. which is located approx. 100 ft. north of the Project Site.
- B. The TIA evaluated seven intersections in the regional area, **none of which are the local surrounding residential streets**, i.e. Bascom Ave., White Oaks Ave, Faircrest Ave, Jackson Ave and Barrett Ave.
- C. When traffic exits the southern driveway, it can turn right and left. The left hand turn should not be allowed. A median is needed on Union Ave to prevent this left hand turn.
- D. A Citizens Advisory Committee needs to be a requirement of the MND.
- E. On site drop off for cars needs to be increased.

The MND **should not be adopted** as is until the Initial Study has been updated.

My comments are as follows:

A. Initial Study - Transportation

1. p. 43, Chapter 3, section P, 2nd paragraph states that the TDM program is "designed to reduce the amount of traffic generated by the school and its effects on the surrounding roadway systems as described ... under impacts." However the surrounding local residential roadway system has NOT been evaluated.
 - a. Barrett Ave is 100 ft north of the Site and also borders one side of the Site. However, it is **never** mentioned in the IS.
 - b. The TIA in the Initial Study:
 - Ignores the impact of traffic to the local surrounding residential streets.
 - Ignores the street parking impact to Barrett Ave and Union Ave.
 - Ignores the traffic backup on southbound Union Ave which will block Barrett Ave
 - c. It is critical that the LOS for Barrett Ave be determined to adequately address the impact of Harker traffic to the local surrounding neighborhood.
 - d. Items to consider in the TIA re-evaluation:
 - A "No Left Turn" from Northbound Union Ave onto Barrett Ave.
 - "No Through Traffic" signs at Barrett/Union and Bascom/White Oaks"

Environmental appeal of Harker's MND

- The need for a crosswalk at the intersection of Barrett Ave and Union Ave
 - A "Keep Clear" marking is needed at this intersection.
 - See Figure 1 in this document for suggested locations for signage.
2. p. 44, Impacts and Mitigation, Thresholds per CEQA Checklist Chart states that "By spreading the school start times over a time span of 40 minutes will increase the amount of traffic entering and exiting the site before and after the school's traffic peak hour. This will therefore reduce the amount of traffic generated by the school during the AM peak hour by approximately 20 percent."
- a. Counts should not be reduced for a "staggered start" – all trips occur within peak hours (7am - 9am), as outlined by San Jose Planning.
 - b. Therefore all trips should be counted. Reducing by 20% is a mis-representation of the true impact.
3. p. 46, Impacts and Mitigation, states "The project proponent shall implement a comprehensive shuttle bus program as part of its Transportation Demand Management (TDM) program to limit AM peak hour vehicle trips to 350 trips or fewer."
- a. How many buses will Harker use?
 - b. At the Public Hearing on 9/26, Harker stated that there would be 5 buses.
 - c. At the Public Hearing on 10/3, Harker stated that there would be 20 buses.
 - d. What is the correct number of buses?
 - e. How many buses are mandatory for the impact on LOS to be insignificant?
 - f. The number of buses required to decrease trip generation to 350 (or 206 as stated at the community outreach meeting) needs to be clearly defined.
 - g. **Use of buses needs to be MANDATORY.**

B. Harker Union Ave. TIA - Appendix E of IS

1. Chapter 5 – Project Conditions - Driveway Operations
- a. p. 40, paragraph 3: The TIA recognizes significant queuing impact on Barrett Ave. and Charmeran Ave, both residential streets. The TIA states "Queues formed on southbound Union Avenue extending past Charmeran Avenue, on eastbound Barrett Avenue (west of Union Avenue), and on eastbound Charmeran Avenue."
 - The MND document does not address these Queues and does not limit use of the surrounding local residential streets by the parents of Harker School.
 - Cars should be restricted to the main arteries, such as Hwy. 85, Bascom Ave., Union Ave. and Camden Ave.
 - See Figure 2 in this document for a visual of traffic flow on Union Ave, on Barrett Ave. and on the site.
 - b. p. 42, Figure 10 shows traffic exiting from the southern driveway, turning both right and left onto Union Ave.
 - Traffic turning right will most likely attempt to enter the on-ramp to 85.
 - The videos of Union Ave & 85 interchange show a very congested junction.
 - Given the very short distance between the southern driveway and the 85 on-ramp, there will be traffic chaos in this section of roadway. (Refer to the website www.concernedcambrians.org)
 - Turning left out of the southern driveway will cause additional traffic chaos.

Environmental appeal of Harker's MND

- Cars exiting left will need to cross two lanes of southbound traffic plus the northbound turning lane, with an estimated 9 car queue.
 - This will create a significant back-up in Harker's exiting queue, therefore causing back-up on Union Ave.
 - Cars should take the main arteries: Union/Camden/Bascom route, and enter 85 at the 85/Bascom junction.
 - The likelihood is that cars will attempt to turn left on Barrett Ave. or Charmeran Ave. and cut through the surrounding local residential streets.
 - See Figure 3 in this document for a visual of traffic flow as cars exit and make a left turn out of the Site on to Union Ave.
-
- e. The left turn request needs to be denied. Additionally: A median Island needs to be constructed on Union Ave., preventing this left turn traffic and enforcing a right-turn only.
2. Chapter 5 – Project Conditions – Neighborhood Intrusions.
- a. p. 45, 2nd paragraph - The TIA states “the route from White Oaks Avenue is circuitous.”
- There are no statements indicating that the White Oaks route **will not be used**.
 - Are we therefore to infer that Harker parents will not use this route?
- b. The high volumes of traffic on the following main thoroughfares will encourage Harker's use of the surrounding local residential streets as a cut-through:
- The LOS at Camden/Union is currently Level D.
 - Woodard Ave.'s traffic is currently approx. 3,900 to 4,200 vpd.
 - The intersection of Union Ave. and westbound 85 Freeway is currently Level F.
- c. In particular, cars that turn left out of the property onto Union Ave will make another left turn onto Barrett Ave. so that they can cut through residential neighborhoods and easily access the carpool lane on 85/Bascom. There is no carpool lane on 85/Union so this is not an attractive route for those trying to head North on 85 during peak AM period (according to the TIA, 47% of Harker families will travel 85 South so we can assume that 47% will travel 85 North after they drop off their child at school).
- d. Figure 12 indicates:
- The daily traffic volume on Barrett Ave between Union Ave and Esther Dr. is at 1730 vpd.
 - Page 45 states that typical carrying capacity for neighborhood streets ranges between 1200 and 1800 vpd.
 - When Harker's school traffic starts to use Barrett Ave., traffic volume on this street will quickly exceed 1800 vpd
- d. The TIA
- Ignores the impact of traffic to the local surrounding residential streets.
 - Ignores the street parking impact to Barrett Ave and Union Ave.
 - Ignores the traffic backup on southbound Union Ave which will block Barrett Ave
- e. Queuing and parking (to unload students) on local residential streets are not in alignment with San Jose policy for “Automobiles, bicycles, and trucks are accommodated equally in the roadway. Transit use is rare. These streets accommodate low volumes of local traffic and primarily provide access to property. Through traffic is discouraged. Neighborhood traffic management strategies to slow and discourage through automobile and truck traffic may be appropriate. Pedestrians are accommodated with sidewalks or paths.”

Environmental appeal of Harker's MND

- g. Figure 6 in the TIA indicates that only 1% of the AM trip distribution will flow along Charmeran Ave and 1% will flow along Barrett Ave. This grossly underestimates the amount of traffic that will cut through the neighborhood.

3. Chapter 5 – Project Conditions – Transportation System Impacts & Mitigation Measures

a. p36, 2nd paragraph - The description states “Based on the existing Fremont shuttle ridership (25 riders in an area with 35 students) and current subscription to the Palo Alto/Los Altos shuttle being added this fall (35 riders in an area with 60 students), approximately 60 to 70 percent of the students in areas served by shuttle buses could reasonably be assumed to use the shuttle buses at the Union Avenue school site.

- Please refer to the Harker website which discusses bus usage ... <http://news.harker.org/new-shuttle-service-from-peninsula-draws-more-than-two-dozen-riders-daily/>. This article was written on Sept. 18, 2012 and states that “The parent-organized Fremont shuttle has been running for more than 15 years ... That bus has had between six and 11 riders this year.) This number is significantly less than the 25 riders stated in the IS (and TIA). This article also states that “Harker has introduced its first school-run shuttle, which will serve those on the Peninsula; 25 students are riding it so far.”. Again, this number is significantly less than the 35 riders stated in the IS (and TIA).
- I request that accurate numbers be used for bus usage and that all determinations using these numbers be re-calculated.

4. Chapter 5 – Project Conditions - Site Plan Review

a. p. 41, paragraph 4, states “Harker currently provides on-site personnel to direct traffic for better circulation and quicker drop-off times and should continue to provide personnel at the new school location.”

- Per the videos of traffic at the Bucknall campus, this system is not working and major back up occurs on residential streets. (<http://concernedcambrians.org/facts/traffic-videos/>)
- Therefore this description is inaccurate and is meaningless for the Union site.

5. Chapter 5 – Project Conditions - Site Plan Review

a. p44, 2nd paragraph - The TIA states that a potential location for drop off is the Cambrian Park Plaza. Confirmation of usage of this car park is needed. Stating that it can be “potentially” used is wishful thinking.

b. p43, Figure 11: Car stacking allows for approximately 60 cars.

- The number of stacked cars needs to be increased to 120.
- Extend driveway into the property so that more cars can be taken off of Union Ave.

Environmental appeal of Harker's MND

C. Planned Development Permit

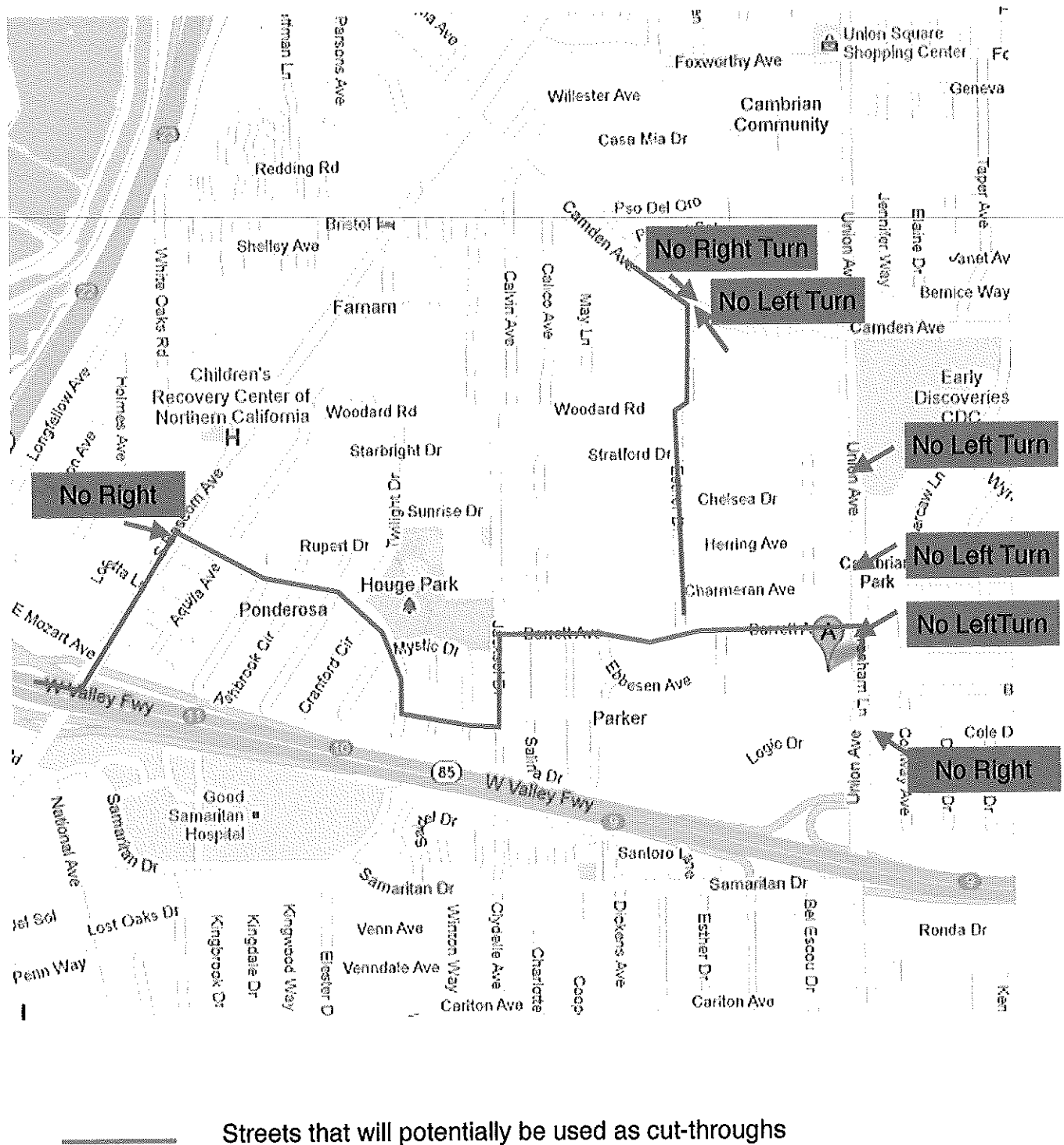
1. p.6 bullet point 9: "Upper elementary grades (2nd through 5th grades) will begin at 8:00 a.m. and the lower elementary grades (Kindergarten through 1st grades) will begin at 8:40 a.m.". This is inadequate. Upper elementary grades should be 3rd-5th grades (300 students) and lower elementary should be K-2nd (300 students) so that the number of cars is divided equally between the two time periods.
2. p.6, bullet point 13: "The Transportation Demand Management (TDM) program shall include designated routes for shuttle bus, carpool, and parent trips that utilize primary arterials." This does not **require** all Harker buses and cars to use primary arterials. It only requires that the primary routes be indicated to those that use them. This is inadequate and needs to be addressed.
3. p.6, bullet point 14: "A neighborhood liaison has been designated for the school". This is inadequate. A Citizens Advisory Committee needs to be a requirement of the MND.

Thank you for your consideration:

Aine O'Donovan
4471 Tomrick Ave, San Jose, CA 95124
aine_odonovan@yahoo.com

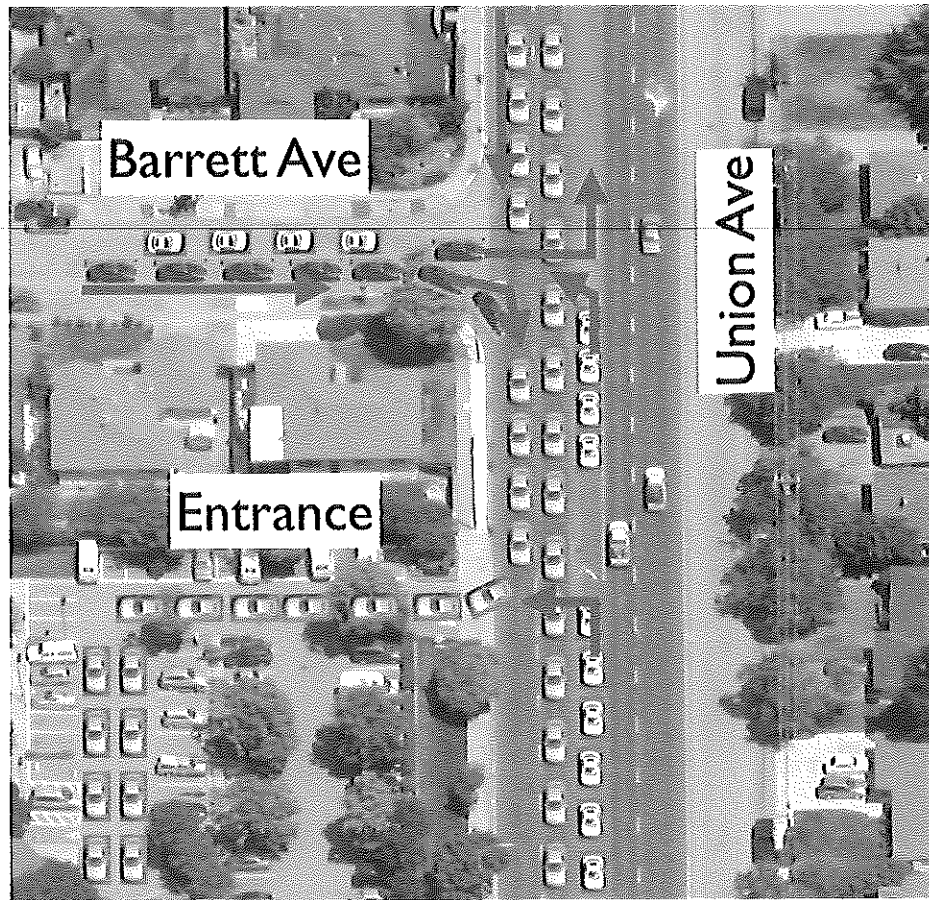
Environmental appeal of Harker's MND

Figure 1



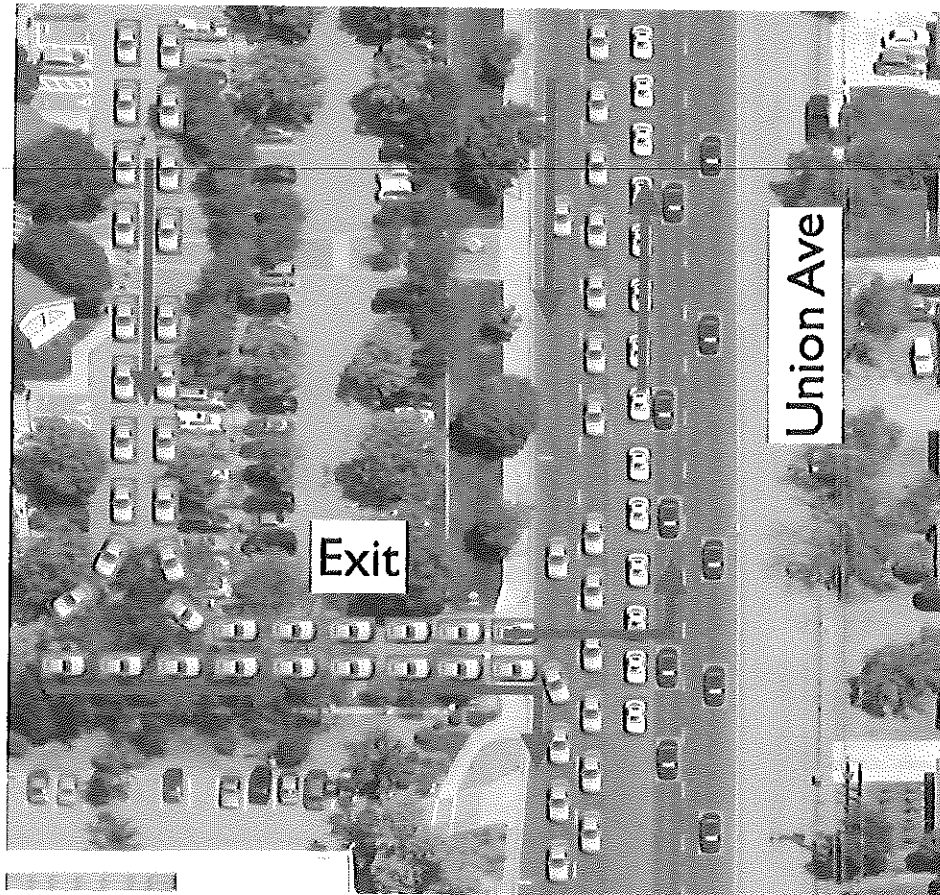
Environmental appeal of Harker's MND

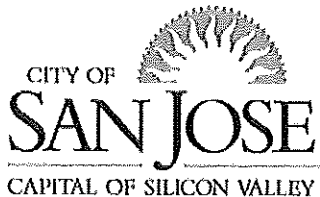
Figure 2



Environmental appeal of Harker's MND

Figure 3



**CITY OF SAN JOSE**

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PD12-027			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):			
See attachments			
PERSON FILING APPEAL			
NAME Jeff Bollini		DAYTIME TELEPHONE (408) 349-5158	
ADDRESS 4489 Jacksol Drive		CITY San Jose	STATE CA ZIP CODE 95124-3338
SIGNATURE <i>Jeff Bollini</i>		DATE 10/9/2012	
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME			
ADDRESS		CITY	STATE ZIP CODE
DAYTIME TELEPHONE ()		FAX NUMBER ()	E-MAIL ADDRESS

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

INSTRUCTIONS FOR FILING AN APPLICATION FOR APPEAL OF AN ENVIRONMENTAL DETERMINATION

WHO MAY APPEAL

Any person may file.

TIME LIMIT

A complete Notice of Environmental Appeal (see back page) must be filed in person at Development Services Center, City Hall, no later than 5 p.m. on the **third business day** following the day of the public hearing that relied upon the Environmental Determination.

APPEAL REQUIREMENTS

1. A complete Notice of Environmental Appeal including the following within the appropriate time limit:
 - a. Application filing fee, (see Filing Fee Schedule).
 - b. The appeal shall state with specificity the reasons that the Environmental Determination should be found not to be complete or not to have been prepared in compliance with the requirements of CEQA.
 - c. No appeal shall be considered unless it is based on issues which were raised at the public hearing either orally or in writing prior to the public hearing. (21.07.040C)

PROCESSING SCHEDULE

Planning Staff:

- Checks the application for completeness.
- Logs and collects fees.
- Sets a public hearing date before City Council and places the item in the agenda.
- Prepares a recommendation to the City Council.

City Council:

- considers and acts upon the appeal in a public hearing.

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ADDRESS	CITY	STATE	ZIP CODE
SIGNATURE		DATE	
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME Jeff Bollini			
ADDRESS	CITY	STATE	ZIP CODE
4489 Jacksol Drive	San Jose	CA	95124-3338
DAYTIME TELEPHONE (408) 349-5158	FAX NUMBER (928) 395-3588	E-MAIL ADDRESS myanonaddr-harker@yahoo.com	

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.

Notice of Environmental Appeal of PD12-027

Submitted by Jeff Bollini on October 9, 2012

Dear City Planning / City Council:

I am appealing Planned Development Permit PD12-027. The monitoring and reporting program for Approval Condition 17d (Transportation) is not comprehensive enough to ensure that the significant environmental effects from project-generated traffic will be adequately mitigated.

With this appeal, I am seeking only one improvement to the Planned Development Permit –the mitigation monitoring program must attempt to count all project-generated traffic and must not be limited to counting only driveway traffic.

Shuttle buses, street drop-offs, and parents who park and walk their children all produce traffic but under the current traffic counting rules they would not be counted. When faced with the possibility of having to reduce enrollment, Harker might be tempted to ask parents to drop off students along Barrett Ave or Union Ave. Parents would likely be supportive of this since it would allow Harker to keep enrollment at the maximum permitted level and no there would be no downsizing. It's not hard to imagine 50 to 100 cars doing this each day during the traffic monitoring period and thereby shielding 100 to 200 vehicle trips from the AM peak hour measurement.

At the conclusion of the 10/3 public hearing at City Hall, I briefly discussed this loophole with Chris Nikoloff, Pam Dickinson, and one other person from Harker School. We all shared a pleasant conversation (including a joke about how Harker wouldn't allow "cheating" even if faced with an enrollment reduction that would cost them \$30K per student) and agreed that we should have a meeting together.

Brian Burke, one of my Cambrian neighbors, made an attempt via email to set up the meeting with Ms Dickinson and Mr Nikoloff. We had hoped to talk with them about some of our concerns and perhaps reach an agreement. Unfortunately

Brian's last email to Pam went unanswered and we have not been able to meet with anyone from Harker. We would have preferred to work together with Harker on this but we were unable to do so before the appeal deadline.

Here are the recommendations that I submitted at the 10/3 public hearing:

The Traffic Monitoring Plan should count each of these conditions as a vehicle trip:

- 1) Enters the parking lot
- 2) Exits the parking lot
- 3) Arrives at the frontage (4525 Union Ave) to wait for, pickup, or unload students or staff
- 4) Departs from the frontage (4525 Union Ave) after waiting for, picking up, or unloading students or staff
- 5) Arrives and stops/parks along Union, Barrett, Esther, Charmeran, Herring, Logic, Cole, Conway, Bronson, or Branham to wait for, pick up, or unload students or staff
- 6) Departs from stopping/parking along Union, Barrett, Esther, Charmeran, Herring, Logic, Cole, Conway, Bronson, or Branham after waiting for, picking up, or unloading students or staff

I ask that you accept this appeal and revise the traffic monitoring plan. As stated on page 7 of the "Tracking CEQA Mitigation Measures Under AB 3180" document, San Jose City Government "cannot escape its responsibility for ensuring the adequacy of the program."

Thank you,
Jeff Bollini

Additional Comments for Appeal:

At the Sep 26 public hearing I introduced evidence that the original Traffic Impact Analysis overstates Harker's current shuttle ridership rate by 100%. The 9/18 Harker online newsletter published a story about Harker shuttle service. The shuttles are not being used by 60% to 70% of the area students as was claimed in the TIA. The true rate is only 33%.

Since shuttles are the key element of Harker's mitigation plan, I am seriously concerned that the MND is based on a false hope of high ridership.

The **spirit** of the traffic mitigation plan is to limit the number of vehicle trips to 350 per AM peak hour for **all** school-associated vehicles, not just those that enter and exit the driveway.

Harker School is funded mostly by student tuition. If they have trouble reaching the desired shuttle or carpool ridership of 60% then it would behoove them to find an alternate way of staying below the AM peak hour limit, such park-and-walk or dropping off on a nearby street.

As stated on Page 7 of the "Tracking CEQA Mitigation Measures Under AB 3180" document:

The task of designing monitoring and reporting programs is the responsibility of the public agency which is approving the project. Although a public agency may delegate this work, the agency cannot escape its responsibility for ensuring the adequacy of the program.

Mitigation measures are the specific requirements which will minimize, avoid, rectify, reduce, eliminate, or compensate for significant environmental effects.

A monitoring and reporting program's effectiveness depends in large part upon the quality of the mitigation measures themselves.

The current mitigation measurement plan has a loophole. It needs to be modified to ensure compliance and to ensure that the environmental effect of traffic from this project is not falsely considered mitigated.

The last thing I'd like to include in this appeal is the following statements about Monitoring, Program Administration, and Cost Recovery taken from the "Tracking CEQA Mitigation Measures Under AB 3180" document:

- The mitigation plan should contain provisions for funding monitoring activities, including the imposition of fees. [Page 9]
- Project monitors, whether agency staff or contract personnel, should be given clear written guidance regarding the mitigation measures to be monitored and reported on. [Page 10]
- Section 21089 authorizes the lead agency to “charge and collect a reasonable fee from any person proposing a project subject to [CEQA] in order to recover the estimated costs incurred ... for procedures necessary to comply with [CEQA] on the project.” This express authority allows the lead agency to levy fees to cover the costs of mitigation monitoring or reporting programs. The fee is limited to the estimated cost of the program, including the agency’s administrative costs. Fees may be used to cover the cost of agency staff, as well as the cost of hiring special monitors or consultants, if needed. [Page 11]

The City of San Jose is presently experiencing budget woes. It might be worthwhile to the city to request that Harker School cover the cost of the monitoring fees and administrative costs.

My name is Jeff Bollini and I have lived at 4489 Jackson Drive for 12 years.

The MND is inaccurate. It uses erroneous data from the TIA and overstates the trip reduction from shuttles.

Please refer to Page 36 of the TIA. [VISUAL #1]

The traffic analysis states that the existing Fremont Shuttle has 25 riders and that the Palo Alto Shuttle has 35 riders.

It further claims 60 to 70 percent of the students could "reasonably be expected" to use shuttle buses to get to the Union site.

All of these claims are wrong.

Please refer to the Harker Newsletter. [VISUAL #2]

This Harker newsletter from September 18th has the true facts.

The Fremont Shuttle, which has existed for 15 years, has only had 6 to 11 riders this year.

The Palo Alto shuttle has only had 25 riders.

Please refer to the Claimed versus Actual data. [VISUAL #3]

While the TIA claims the Fremont shuttle has 71% ridership, the truth is it's only 23%. The TIA claims the Palo Alto shuttle has 58% ridership. The truth is it's only 42%.

The shuttle bus mitigation proposed in the MND overstates its benefit by 100%. Actual ridership is 50% less than what was claimed. The Fremont shuttle has operated for 15 years and can only must 23% ridership.

The MND is incomplete. It completely leaves out the impact of traffic on Barrett and the intersection of Barrett and Union. It fails to address "car queuing" on the streets leading into the site.

The MND is inaccurate. It overstates the benefit of busing by 100%.

I urge that the MND and the planned development permit be denied.

Thank you.

Submitted by Jeff Bollini on Sep 26, 2012

Freeway Mitigation Measures

As shown in **Table 8**, the project would add more than 1 percent of the freeway's capacity to five of the eleven study freeway segments currently operating at LOS F thus creating a freeway impact. Harker will need to reduce the amount of traffic it adds to the freeway segments to reduce the impact to a less-than-significant level. This can be accomplished through a comprehensive shuttle bus program.

In addition to the current Fremont residents that are receiving shuttle services, Harker will provide additional buses to serve the Evergreen/Silver Creek area of San Jose, Palo Alto, Los Altos, Mountain View, Cupertino, Saratoga and Sunnyvale, as illustrated in **Figure 9**. These areas are home to 300 to 310 students. Based on the existing Fremont shuttle ridership (25 riders in an area with 35 students) and current subscription to the Palo Alto/Los Altos shuttle being added this Fall (35 riders in an area with 60 students), approximately 60 to 70 percent of the students in areas served by shuttle buses could reasonably be assumed to use the shuttle buses at the Union Avenue school site. This would equate to approximately 180 new riders. The trip reductions associated with the 180 added riders are estimated to be 240 AM peak hour vehicle trips (120 inbound and 120 outbound) and 160 PM peak hour trips (80 inbound and 80 outbound). **Table 9** shows the freeway volumes after shuttle service reductions.

TABLE 9 FREEWAY PROJECT VOLUMES BEFORE AND AFTER SHUTTLE MITIGATION

Time Period	Time Period	Inbound			Outbound		
		SR 85 (SB)	SR 85 (NB)	Total	SR 85 (NB)	SR 85 (SB)	Total
AM Peak Hour	Total Trips	163	41	204	121	34	155
	Shuttle Reduction	(90)	(30)	(120)	(90)	(30)	(120)
	Net New Trips	73	11	84	31	4	35
PM Peak Hour	Total Trips	93	26	119	107	27	134
	Shuttle Reduction	(60)	(20)	(80)	(60)	(20)	(80)
	Net New Trips	33	6	39	47	7	54

Notes: NB = Northbound, SB = Southbound
Source: Fehr & Peers, August 2012.





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Feature Story

New Shuttle Service from Peninsula Draws More Than Two Dozen Riders Daily

By William Cracraft | Sep. 18, 2012



The Harker School Shuttle Service

0

[Tweet](#)

Harker has introduced its first school-run shuttle, which will serve those on the Peninsula; 25 students are riding it so far. There has been a parent-run shuttle from Fremont for some years which the Peninsula shuttle will complement, solving, for some families, the knotty issue of driving to drop students, then returning to their home area for work.

The shuttle makes one stop in Portola Valley, one in Los Altos, then heads to the middle school where upper school students transfer to a waiting bus that takes them to their campus, while the shuttle itself continues on to the lower school.

Cost is quite reasonable at \$25 per student per week, with discounts for families of three or more riders. Aside from cutting down on pollution and traffic, and saving parents' time, Pip Sanders (Zoe, grade 4), said, "Running the shuttle expands Harker's outreach and accessibility to families who live some distance from Harker."

"I would love to see our ridership increase!" said Heather Perrotta, Harker transportation manager. "Not only does it decrease traffic on our campuses, it gives a sense of bonding to the students. They are able to get to know other students from their neighborhood that they may otherwise not have known. It can also be an opportunity to get some last minute studying done before class."

Harker is open to expanding the service to other areas, too. "We are hoping that the success of this route will lead to others, and we will be exploring those possibilities over the course of this year using the same market testing methods we did for this one," said Greg Lawson, assistant head of school for student affairs.

The parent-organized Fremont shuttle has been running for more than 15 years, said Monica Kumar (Gaurav, grade 11; Maya, grade 7), who organizes the shuttle. That bus has had between six and 11 riders this year. "My son is now a junior and he took the shuttle from kindergarten until tenth grade," when he started driving himself, she said. "My daughter is still taking the shuttle."

"The shuttle saves time for busy parents and makes sure kids get to school safely and on time!"

The collected speeches and columns of Chris Nikoloff, Head of School

HEADLINES
— by Chris Nikoloff

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Submitted by Jeff Bollini on Sep 26, 2012

Claimed vs Actual

Shuttle Area	Max Students	CLAIMED		ACTUAL	
		# Riders	% Usage	# Riders	% Usage
Fremont	35	25	71%	8	23%
Palo Alto/Los Altos	60	35	58%	25	42%

The shuttle bus mitigation proposed in the TIA and MND is **overstated by 100%**.

Actual ridership is 50% less than what was claimed.

Fremont shuttle has operated for 15 full years yet has only 23% usage.

Err on the side of caution. Assume 30% adoption on average.

y name is Jeff Bollini and I live at 4489 Jacksol Drive.

s we all know, this project WILL create new traffic.

at here's a quote from Page 7 of the Planned Development Permit...
The TDM Program shall be monitored by conducting driveway traffic counts."

nder this monitoring plan, only vehicles that enter and exit the parking lot will be
ounted.

at about shuttle buses that drop off students in front of the school?
hey don't enter the parking lot so they won't be counted.

at about parents who park on Barrett, Union, Charmeran, Esther, Cole, or at Xilinx and
alk the rest of the way?
hey don't enter the parking lot so they won't be counted.

at about parents who drive down Barrett and let their kids exit and walk the rest of
ne way?
hey don't enter the parking lot so they won't be counted.

ny school-related car or bus generates traffic as it arrives AND as it departs.
ne intent of mitigation and monitoring is to reduce the traffic impact.
nfortunately, the monitoring plan, as it is currently written, is very easy to evade.

VISUAL #1]

request that the monitoring plan be modified to count all vehicular traffic
nat meets any of the following conditions:

- 1) enters the parking lot
- 2) exits the parking lot
- 3) arrives at the frontage to wait for, pick up, or unload students or staff
- 4) departs from the frontage after waiting for, picking up, or unloading students or
taff
- 5) arrives and stops or parks along the neighboring streets to wait for, pick up, or
nload students or staff
- 6) departs after stopping or parking along neighboring streets to wait for, pick up, or
nload students or staff

his modification will close a loophole.
t will eliminate an opportunity to evade.
t will ensure that all school traffic is fairly counted.

thank you.

Submitted by Jeff Bollini on Oct 3, 2012
--

The Traffic Monitoring Plan should count each of these conditions as a vehicle trip:

- 1) Enters the parking lot
- 2) Exits the parking lot

- 3) Arrives at the frontage (4525 Union Ave) to wait for, pick up, or unload students or staff
- 4) Departs from the frontage (4525 Union Ave) after waiting for, picking up, or unloading students or staff
- 5) Arrives and stops/parks along Union, Barrett, Esther, Charmeran, Herring, Logic, Cole, Conway, Bronson, or Branham to wait for, pick up, or unload students or staff
- 6) Departs from stopping/parking along Union, Barrett, Esther, Charmeran, Herring, Logic, Cole, Conway, Bronson, or Branham after waiting for, picking up, or unloading students or staff

It is unreasonable to only conduct driveway traffic counts.

Bonus video from Bucknall K-5 Campus:

<http://www.youtube.com/watch?v=oMPGmVxiSY4>

Parents that park-and-walk along street should be counted.

Pete Wilson, Governor

TRACKING CEQA MITIGATION MEASURES UNDER AB 3180

CEQA Technical Advice Series



GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

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Third Edition, March 1996

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Al Herson, *Jones and Stokes Associates*

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Christine Sproul, *Office of the California Attorney General, Land Law Section*

Introduction



Newton's Law provides that for every action there is an equal and opposite reaction. CEQA on the other hand provides that whenever a proposed project will result in potential significant adverse environmental impacts, measures must be taken which will limit or avoid that impact. These may include conditions of approval, revisions to the project, and, less frequently, approving an alternative project with fewer impacts. Where such measures are imposed, there must be a program for monitoring or reporting on the project's compliance with those measures.

Section 21081.6 of the Public Resources Code requires all state and local agencies to establish monitoring or reporting programs whenever approval of a project relies upon a mitigated negative declaration or an environmental impact report (EIR). The monitoring or reporting program must ensure implementation of the measures being imposed to mitigate or avoid the significant adverse environmental impacts identified in the mitigated negative declaration or EIR.

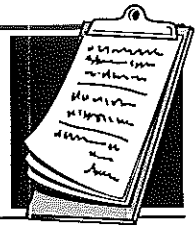
The Office of Planning and Research (OPR) has written this advisory publication to offer lo-

cal governments basic information and practical advice about how they may comply with the mitigation monitoring and reporting program requirements. It is supplementary to, and not an amendment or revision of, the *California Environmental Quality Act Guidelines*. Accordingly, this publication represents the informal guidance of OPR regarding compliance with Section 21081.6, but is not a regulation. This is part of OPR's public education and training program for planners, developers, and others.

The following suggestions are not the only methods of implementing Section 21081.6. The examples that follow are illustrative and not limiting. Agencies can develop their own programs to meet the variety of projects and unique circumstances which they encounter.

The third edition of *Tracking CEQA Mitigation Measures Under AB 3180* is based upon the law as it existed on January 1, 1996. Readers should refer to the most recent CEQA statute to ensure that they are meeting all current requirements. Code citations in this document are to the Public Resources Code, unless otherwise noted.

1 A Brief History of AB 3180



Despite CEQA's emphasis on mitigation, until 1988 the Act did not require that agencies take actions to ensure that required mitigation measures and project revisions were indeed being implemented. When reports of gross disregard for mitigation requirements reached the State Legislature in that year, it responded by enacting AB 3180 (Cortese). Section 21081.6 of the Public Resources Code, added by this bill, provides that whenever a mitigated negative declaration is adopted or a public agency is responsible for mitigation pursuant to an EIR, the agency must adopt a program for monitoring or reporting on project compliance with the adopted

mitigation. The legislation was signed into law by Governor Deukmejian in September of 1988 (Chapter 1232, Statutes 1988) and took effect on January 1, 1989.

OPR published the first edition of Tracking Mitigation Measures in early 1989 to provide guidance to local agencies in complying with the requirements of Section 21081.6. Expert publications and the efforts of U.C. Extension instructors have continued this education. As a result, by 1993, approximately 75% of cities and counties had enacted measures to comply with AB 3180. This edition of Tracking Mitigation Measures updates the advice offered by its predecessor.

2 Programs Required by Section 21081.6



Section 21081.6 establishes two distinct requirements for agencies involved in the CEQA process. Subdivisions (a) and (b) of the section relate to mitigation monitoring and reporting, and the obligation to mitigate significant effects where possible. Subdivision (c), which was amended into the code by AB 375 of 1992, is almost a non-sequitur. Its subject is the responsibility of responsible and trustee agencies during consultation on a negative declaration or EIR.

Pursuant to subdivision (a), whenever a public agency either: (1) adopts a mitigated negative declaration, or (2) completes an EIR and makes a finding pursuant to Section 21081(a) of the Public Resources Code taking responsibility for mitigation identified in the EIR, the agency must adopt a program of monitoring or reporting which will ensure that mitigation measures are complied with during implementation of the project. When changes have been incorporated into the project at the request of an agency having jurisdiction by law over natural resources affected by the project, that agency, if so requested by the lead or responsible agency, must prepare and submit a proposed reporting or monitoring program for the changes.

A project which is exempt from CEQA, or for which a simple (i.e., not mitigated) negative declaration has been prepared requires no AB 3180 program. In addition, no program is required for projects which are disapproved by the agency. Nor is a program required to address those mitigation measures which the agency has found to be either the responsibility of another agency or infeasible, pursuant to subdivisions (b) and (c) of Section 21081.

Besides ensuring implementation of mitigation measures, as required by statute, a monitoring or reporting program may provide feedback to staff and decisionmakers regarding the effectiveness of mitigating actions. Such experiential

information can be used by staff and decisionmakers to shape future mitigation measures.

Subdivision (b) of Section 21081.6 requires that mitigation measures be "fully enforceable through permit conditions, agreements, or other measures." Incorporating the mitigation measures into the conditions of approval applied to the project meets this requirement. Where the project consists of a general plan (or other type of policy plan), a regulation, or a public project, the mitigation measures can be incorporated into the policies of the plan, the regulations themselves, or the design of the project to meet the enforceability requirement.

Subdivision (c) creates a requirement for responsible and trustee agencies which have identified a significant impact during consultation on a negative declaration or EIR. This requirement is not directly related to mitigation monitoring or reporting programs, nor is it limited to those situations which require mitigation monitoring or reporting. We will discuss it only briefly before moving on.

Pursuant to subdivision (c), when a responsible or trustee agency suggests mitigation measures to address a significant impact which that agency has identified during consultation, it must either provide the lead agency with "complete and detailed performance objectives" (i.e., standards by which to meet specific objectives of the responsible or trustee agency) for those measures or refer the lead agency to readily available guidelines which would be the functional equivalent of such objectives. The mitigation measures suggested by a responsible or trustee agency are limited to those within the statutory authority of that agency (Section 21080.4). In effect, a responsible or trustee agency is required to limit its requests for mitigation measures to those subjects over which it has

regulatory powers and to provide the lead agency with sufficient information to allow the lead agency to effectively fashion such measures.

The requirements of subdivision (c) impact the lead agency's mitigation monitoring or reporting program to the extent that the lead agency imposes such measures on the project. It does not alter the

lead agency's responsibility for determining, on the basis of the evidence before it, whether a significant effect exists and how it may be mitigated. When the lead agency does not adopt those measures, it need not address them in a monitoring or reporting program.

3 Mitigation Monitoring or Reporting Programs



CEQA requires that each public agency adopt objectives, criteria, and specific procedures to administer its responsibilities under the Act and the CEQA Guidelines (Section 21082). Accordingly, local agencies should revise their adopted CEQA guidelines and procedures as necessary to include the requirements of Section 21081.6.

The task of designing monitoring and reporting programs is the responsibility of the public agency which is approving the project. Although a public agency may delegate this work, the agency cannot escape its responsibility for ensuring the adequacy of the program.

Each city and county may adopt programs which match their unique circumstances. The contents and complexity of the programs may be expected to vary based on the characteristics of the project being approved, the environmental effects being mitigated, and the nature of the mitigation measures themselves. Further, the public agency may choose whether its program will monitor mitigation, report on mitigation, or both.

The statute does not define the terms "reporting" or "monitoring," leaving this to the interpretation of the affected agency. Later in this section, we will offer simple definitions for discussion purposes. In practice, however, there is no clear distinction between monitoring and reporting, and the program best suited to ensuring compliance with mitigation measures will generally involve elements of both. For example, reporting requires the agency to monitor mitigation at some point in time. Likewise, a monitoring program can include regular reports to the decisionmaking body.

Mitigation Measures

Since the purpose of a monitoring or reporting program is to ensure the implementation of

mitigation measures, a quick look at mitigation measures will be the first item in our discussion. Mitigation measures are the specific requirements which will minimize, avoid, rectify, reduce, eliminate, or compensate for significant environmental effects. See Section 15370 of the CEQA Guidelines for a full definition.

A monitoring and reporting program's effectiveness depends in large part upon the quality of the mitigation measures themselves. Poorly drafted measures are not only difficult to implement, they are difficult to report on and monitor.

Here are some suggestions for preparing mitigation measures:

- 1 **Certainty:** Avoid using the words "may" or "should" when the intent is to direct some required action. "Will" or "shall" are much better. Avoid measures that are conditioned on feasibility (i.e., required "where feasible") rather than applied directly or at a specified stage in the project.

Measures should be written in clear declaratory language. Specify what is required to be done, how is to be done, when it must be done, and who is responsible for ensuring its completion.

- 2 **Performance:** Include specific minimum, measurable performance standards in all quantitative measures, and if possible, contingency plans if the performance standards are not met.
- 3 **Authority:** CEQA does not provide independent authority to carry out mitigation (Section 21004). Measures which are not based on some other authority (i.e., zoning code, tree preservation ordinance, development agreement, impact fee ordinance, subdivision ordinance, etc.) are unenforceable. Monitoring or reporting on their implementation would clearly be problematic.

4 Continuity and Consistency: To the extent possible, integrate measures with existing policy and regulatory systems, and inspection or review schedules. Where the mitigation measures are regulatory in nature, for example, design them as conditions of approval within the context of the zoning, subdivision, or other ordinances. Further, mitigation measures must take applicable general plan and specific plan policies into account and not conflict with those policies.

5 Feasibility: Above all, measures must be feasible to undertake and complete. Avoid the trap of imposing mitigation measures that are based upon future activities of uncertain outcome. For example, the court in *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296 overturned the county's negative declaration for a motel project because the county required a study of potential sewage disposal methods rather than actions which would mitigate sewage impacts. A measure that did not mitigate the impact could not be the basis for a finding that impacts were mitigated.

Although infeasibility becomes obvious as the agency attempts to monitor or report on implementation, by that time it is too late. Early in the process of developing mitigation measures, the EIR or negative declaration preparer should consider how implementation of each measure is to be reported on or monitored. This offers a convenient feasibility test.

Reporting

For purposes of simplification, "reporting" may be defined as a written review of mitigation activities that is presented to the approving body by either staff or the project developer. A report may be required at various stages during project implementation and upon completion of the project.

Reporting without detailed monitoring is suited to projects which have readily measurable or quantitative mitigation measures or which already involve regular review. For example, the

annual report on general plan status required under Government Code Section 65400 may serve as the reporting program for a city or county general plan as long as it meets the requirements of Section 21081.6. Reporting is also suited to simple projects where a means of reviewing project compliance already exists, such as issuance of building permits and related inspections.

A program for reporting on the implementation of mitigation measures should contain at least the following components:

- 1** A list of the mitigation measures being reported on.
- 2** Standards for determining compliance with each mitigation measure and the related condition of approval.
- 3** A schedule for making one or more reports to the approving agency regarding the level of compliance of the project with the required mitigation measures and related conditions of approval. The program may set out the stages of the project at which each mitigation measure must be implemented (*Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 49).
- 4** A statement which identifies the person or agency, public or private, responsible for reviewing the project and for preparing and making the report to the agency.

These components may be combined in a checklist, matrix, or other representation of the required mitigation measures or revisions, any related conditions of approval, the persons or agencies responsible for ensuring their completion, and the responsible person's or agency representative's affirmation of completion. In some cases, where mitigation will occur in stages during the project, or a mitigation measure contains more than one part, preparing a checklist for each mitigation measure may be an effective approach.

Monitoring

"Monitoring" can be described as a continuous, ongoing process of project oversight. Moni-

toring, rather than simply reporting, is suited to projects with complex mitigation measures, such as wetlands restoration or archeological protection, which may exceed the expertise of the local agency to oversee, which are expected to be implemented over a period of time, or which require careful implementation to assure compliance.

A program for monitoring the implementation of mitigation measures should contain at least the following components:

- 1** A list of the mitigation measures or revisions and related conditions of approval which have been adopted for the project by the agency.
- 2** A schedule for regularly checking on the project's compliance with the mitigation measures or project revisions and related conditions of approval, including progress toward meeting specified standards, if any. The program may set out the stages of the project at which each mitigation measure must be implemented (*Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 49).
- 3** A means of recording compliance at the time of each check.
- 4** A statement assigning responsibility for monitoring implementation of the mitigation measures and related conditions of approval to specific persons or agencies, public or private.
- 5** If monitoring duties are contracted to private individuals or firms, provisions for ensuring that monitoring reflects the independent judgment of the public agency. Such provisions might include requiring the submittal of regular progress reports to the agency, establishing a mechanism for appealing actions of the contractor to the agency for decision, or selection of the contractor by the agency (as opposed to solely by the applicant). Regardless of whether monitoring is performed by the agency or a contractor, the agency retains the ultimate legal responsibility for satisfying the requirements of section 21081.6.
- 6** Provisions for funding monitoring activities, including the imposition of fees.
- 7** Provisions for responding to a failure to comply with any required mitigation measure (in-

cluding conditions of approval). This might include "stop work" authority, permit revocation proceedings, or civil enforcement procedures. This can also include administrative appeal procedures.

Some agencies prepare a separate worksheet describing each mitigation measure and its monitoring requirements. These worksheets are provided to the monitors.

General Approaches to Reporting and Monitoring

Following are two basic approaches which an agency might use:

- 1 Jurisdictional Framework:** A standard mitigation monitoring and reporting ordinance or guidelines adopted by the jurisdiction may establish the basis for individually tailored programs. This framework would express the relative roles of involved agencies, staff, and project proponents; establish administrative procedures; lay out a standardized format for reporting or monitoring programs; establish general timetables; and provide or identify enforcement mechanisms. It may also include standard methods of reporting or monitoring for common mitigation measures.

Standardizing the framework for monitoring or reporting programs promotes consistency and thoroughness in reporting or monitoring activities.

- 2 Project Specific:** Develop a new, specially tailored program for each project which triggers Section 21081.6. Such a program may be imposed under the regulatory authority of the agency. Compliance could be required as a condition of project approval or, if a framework ordinance is in place, by reference to that ordinance.

This may be the best way to approach large and complicated development projects which will have special monitoring requirements. It is useful where a standardized program alone

may be inadequate to such a situation. This approach may also make sense for small cities and counties which adopt EIRs or mitigated negative declarations infrequently.

Regardless of the method chosen, a draft AB 3180 program should be made available to decisionmakers prior to the formal adoption of either a mitigated negative declaration or the EIR-related findings in Section 21081 (a).

Although not required to do so, some agencies choose to circulate the draft program during consultation on the draft environmental document. This allows public and agency comments on the effectiveness of both mitigation measures and the associated monitoring or reporting program. When circulating a draft, the agency should specify that the program is not final and is subject to change prior to adoption.

Ultimately, the agency must enact a program which reflects the mitigation or project revisions adopted as part of the mitigated negative declaration or subject to findings under Section 21081 (a), regardless of what might have been in the draft documents. If mitigation measures are revised, added or dropped prior to approval of the project, the adopted AB 3180 program must reflect those changes.

Program Administration

Project monitors, whether agency staff or contract personnel, should be given clear written guidance regarding the mitigation measures to be monitored and reported on. This is particularly important in those cases, such as where a large private project is involved, the applicant will perform the actual monitoring. Further, when compliance is achieved, there should be a clear "sign off" by the appropriate agency to ensure that this compliance is documented.

Worksheets offer a convenient means of tracking compliance. Worksheets can be used to express: (1) impact being mitigated; (2) mitigation measure for that impact; (3) implementor; (4) monitor; (5) monitoring requirements; (6) frequency of monitoring or reporting; (7) standards

for completion or compliance; and (8) verification of compliance. Some agencies also include a checklist to summarize the monitoring or reporting record.

When the program is a relatively simple one, a checklist rather than a worksheet may suffice to guide inspections, record findings, and certify compliance.

Implementation

In order to maximize efficiency in implementing a monitoring or reporting program, the agency should make every effort to integrate the requirements of the program with its current land use regulations and inspection procedures. This applies whether the program is comprehensive or project specific. As a general rule, the more that mitigation monitoring or reporting programs can utilize existing procedures and requirements, the easier those programs may be to implement. The more that such programs work outside usual procedures, the more expensive and time consuming they may be to implement.

This is not intended to say that a program should monitor or report on zoning or other regulations that are not mitigation measures. While working within the existing regulatory system, the program's scope is limited to mitigation measures resulting from the project's mitigated negative declaration or EIR.

Enforcement

CEQA does not create new authority for agencies to carry out or enforce mitigation measures. Agencies must rely upon the authority conferred by other laws. In the case of a city or county, this would include local zoning, subdivision, and related land use regulations. Typically, enforcement procedures are enacted by ordinance and provide for administrative dispute resolution.

OPR recommends that if a jurisdiction-wide AB 3180 program is adopted, that it contain, or reference other existing regulations which would enforce compliance with the mitigation measures. A jurisdiction-wide program that includes enforce-

ment regulations must be adopted by ordinance in order to be effective. In the absence of a jurisdiction-wide AB 3180 ordinance, individual mitigation monitoring or reporting programs should reference those existing regulations, such as the zoning ordinance, that will provide enforcement.

Cost Recovery

Section 21089 authorizes the lead agency to “charge and collect a reasonable fee from any person proposing a project subject to [CEQA] in order to recover the estimated costs incurred ... for procedures necessary to comply with [CEQA] on the project.” This express authority allows the lead agency to levy fees to cover the costs of mitigation monitoring or reporting programs. The fee is limited to the estimated cost of the program, including the agency’s administrative costs. Fees may be used to cover the cost of agency staff, as well as the cost of hiring special monitors or consultants, if needed.

Fees for complex AB 3180 programs, such as those involving long-term monitoring or continuous observation over time, are often charged on the basis of time and work. Flat fees are usually

charged when the AB 3180 program involves routine inspections and reporting. In practice, hourly fees and flat fees charged on a sliding scale based on project type or size are equally popular among cities and counties.

Responsible and Trustee Agencies

Lead and responsible agencies may adopt different AB 3180 programs for the same project. This is because the agencies often do not adopt the same set of mitigation measures. In general, when a lead agency approves a project for which an EIR was prepared, it adopts feasible mitigation measures for those portions of the project which it controls or regulates. In turn, the responsible agency adopts only the mitigation measures pertinent to its statutory authority. Under ideal circumstances the programs of the lead and responsible agencies, when taken together, should monitor or report upon all of the adopted mitigation measures and project revisions.

Section 21081.6 does not require agencies to duplicate monitoring programs. Agencies can avoid potential duplication by coordinating their relative roles during the consultation process.

4 Common Questions Regarding Section 21081.6



A number of issues commonly arise in complying with Section 21081.6. In many instances, there may be a variety of ways to resolve a particular concern; the following discussion is intended to stimulate thinking rather than to represent the only solutions. Here are some responses to commonly asked questions.

Question:

What does Section 21081.6 require when an EIR for an earlier project is recertified (or certified with an addendum) and applied to a subsequent project, avoiding the need to prepare a new EIR? What is the requirement when a program EIR is used as the basis for a subsequent EIR, or a later project EIR is tiered on the earlier EIR for a plan, program, or ordinance?

Answer:

The monitoring or reporting requirements of Section 21081.6 apply whenever the lead agency makes findings under Section 21081 (a) relative to the mitigation measures or alternatives being required of the project. An AB 3180 program must be adopted which addresses each mitigation measure or project change for which a finding is made. Similarly, if a project is analyzed pursuant to a program EIR or involves tiering, an AB 3180 program would be required for each mitigation measure or project change subject to findings under Section 21081 (a) or required under a mitigated Negative Declaration.

Question:

What happens when an agency has a lack of trained personnel to monitor required mitigation measures?

Answer:

This does not reduce the agency's responsibility to adopt and carry out an AB 3180 program. Outside consultants may be retained to provide assis-

tance. The cost of the consultant may be borne by the agency or charged to the project proponent.

Question:

What is the project planner's role in monitoring/reporting?

Answer:

This is left to the discretion of the involved agency. However, the relative roles of personnel should be spelled out in either an individual or jurisdiction-wide program.

Question:

What happens when the developer and the agency personnel assigned to monitor a project have differences of opinion over mitigation or monitoring requirements?

Answer:

Monitoring personnel must be given sufficient authority to ensure that the mandated mitigation is being implemented. A jurisdictional framework can establish methods of resolving disputes such as administrative appeal.

Question:

Have courts added any specific requirements for reporting or monitoring programs beyond those established by statute?

Answer:

No. In the two cases to date (*Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31 and *Rio Vista Farm Bureau v. County of Solano* (1992) 5 Cal.App.4th 351), the courts have not expanded the requirements beyond those explicit in statute.

Question:

Must a mitigation monitoring or reporting program address conditions of approval that are neither mitigation measures for significant effects nor

revisions to the project required pursuant to the environmental document?

Answer:

No. An AB 3180 program must address mitigation measures and project revisions required pursuant to the CEQA document. A program is *not* required to address those conditions of approval that are not related to mitigation. The agency may monitor these other conditions at its own discretion.

Question:

Must a draft AB 3180 program be circulated with the draft mitigated negative declaration or draft EIR?

Answer:

Nothing in CEQA requires the mitigation monitoring program to be circulated with or included in the EIR (*Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 49). Some agencies do circulate drafts in conjunction with a draft EIR. The comments received on the program can be used to fine tune the program prior to adoption. Whether an agency must respond to such comments in the final EIR is unknown. Certainly a case might be made that no response is necessary where the draft program is not an integral part of, but is merely circulated with, the draft EIR. Where the program has been incorporated into the draft EIR, there may be a need to respond to comments on the draft program.

Question:

How does AB 3180 apply to actions such as adoption of a general plan or rezoning where there are no conditions of approval, and mitigation is provided by policies or regulations that are incorporated into the general plan or zoning?

Answer:

In the case of a general plan, mitigation measures should be integrated directly into the plan's policies (Section 21081.6(b)). The AB 3180 program can build upon the annual general plan status report required of each planning agency under Government Code Section 65400. It may not be nec-

essary to monitor or report on site-specific mitigation measures, except to the extent of being included in the policies and standards of the plan and considered in future land use decisions (*Rio Vista Farm Bureau v. County of Solano* (1992) 5 Cal.App.4th 351, 380).

If some of the mitigation measures for the plan are based on the subsequent adoption of new ordinances or regulations rather than being implemented by general plan policies, progress in enacting those regulations can be monitored or reported on by establishing a timetable for regular status reports to the city council or board of supervisors.

A program of regularly scheduled status reports might also be suitable for monitoring or reporting on the mitigation measures applied to a specific plan or rezoning. Recognize that where the specific plan or rezoning is associated with other actions such as a planned unit development or subdivision, i.e., actions with a finer level of detail than a plan or rezone, status reports may be only one portion of the overall AB 3180 program.

The lead agency is not allowed to *delay* adoption of a program until a subsequent discretionary permit is required. Section 21081.6 clearly mandates adoption of the monitoring or reporting program when the lead agency approves a project. Adoption of a program cannot be put off, nor may the program ignore qualifying mitigation measures or required project revisions.

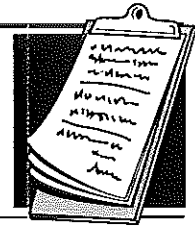
Question:

Should the monitoring or reporting program be adopted as a condition of project approval?

Answer:

This depends upon the type of project and the existing regulatory scheme. In some cases, such as where the program is based on a framework ordinance, adopting the program as a condition of approval may be redundant. In other instances, such as where a project specific program is being imposed, it may make sense to require compliance with the program as a condition of project approval.

5 Examples of AB 3180 Comprehensive Programs



The City of Encinitas

Encinitas adopted a comprehensive monitoring program in 1989, soon after AB 3180 was enacted. In addition to project-specific monitoring and reporting, the program commits the city to regular review of and reporting on city-wide impacts on development fees, the mitigation measures adopted as part of the general plan, and the progress general plan implementation.

Encinitas' program establishes the following basic provisions:

- 1 All mitigation measures are to be adopted as conditions of project approval. The conditions will specify a time at which implementation is expected to be complete.
- 2 Project approvals will be by resolution or formal notice of decision and will identify those mitigation measures being adopted as conditions. Copies of all decisions will be routed to the affected city agencies.
- 3 The resolution or notice of decision will be attached directly to all permits issued to the project. Mitigation which requires monitoring will be marked on the construction plans for the inspector and contractor. No permits will be issued until the Community Development Department has confirmed that any preconstruction mitigation requirements have been completed.
- 4 Staff is required to confirm completion of mitigation measures prior to signing off on city forms. Each department is required to confirm the measures which relate to its responsibilities, coordinated by the Community Development Department.
- 5 The Community Development Department is responsible for any monitoring which occurs after project completion. This includes admin-

istering the review of long-term monitoring plans required of applicants. The program authorizes the Department to collect fees to recover its costs.

- 6 Each department will maintain the original program files for projects which it approves. Copies of the documentation will be given to each agency imposing mitigation.

A copy of Encinitas' community-wide program is included in the appendix.

Sacramento Metropolitan Air Quality Management District

The district's 1993 "Environmental Review Guidelines" contain standardized requirements for establishing district monitoring and reporting programs. Under these requirements, approval of the project does not become final until the adoption of a mitigation monitoring or reporting program. Compliance with the adopted program is imposed as a condition of project approval. Upon adoption, the program is forwarded to the County Recorder for recordation in order to put the requirements of the program into the chain of title and provide successors to the permittee with substantive notice of the requirements. A "program completion certificate" must be issued by the district before the project will be considered to meet all requirements of a program. This certificate is also recorded, indicating that the requirements of the program have been met.

The district's guidelines require that district programs contain the following standard elements:

- 1 A statement that the requirements of the program run with the property involved, as opposed to the permittee, and all successive owners.

- 2 A statement that the permittee must provide a copy of the adopted program to any potential lessee, buyer, or transferee of the involved property.
- 3 A statement of the responsibilities of the applicant and the district's environmental coordinator, as well as whether other professional expertise is necessary to complete or evaluate of any part of the program.
- 4 A schedule of tasks or phases which, upon completion, will allow issuance of a program completion certificate.

With regard to compliance, the Guidelines requires the applicant to submit regular written progress reports to the district, verified by the district environmental coordinator, and to correct any noncompliance in a timely manner.

The County of Santa Barbara

Santa Barbara County established some of the earliest mitigation monitoring programs in the State, monitoring large projects even before the passage of AB 3180. The County's Environmental Quality Assurance Programs (EQAPs), which establish comprehensive monitoring programs for large-scale environmentally sensitive projects were first developed before AB 3180. An EQAP describes the relative roles of staff, consultants, and project proponents in the monitoring process. It also provides specific performance standards for compliance and the sanctions for failure to meet those standards .

After enactment of AB 3180, the County adopted a "Permit Compliance Procedure Manual" to ensure compliance with mitigation measures and conditions of approval; to initiate county enforcement procedures; establish a systematic and consistent approach to monitoring mitigation measures and conditions of approval; maintain standard mitigation monitoring and reporting requirements, mitigation measures, and conditions of approval across departmental lines; develop a reporting program that provides feedback on the effectiveness of mitigation measures and conditions of approval; and use the feedback from moni-

toring programs to develop more effective comprehensive planning policies. These procedures also include reporting on the effectiveness of mitigation measures, even though AB 3180 does not require this.

The manual establishes the role and authority of the County's Permit Compliance group to monitor mitigation and conditions of approval. It also establishes detailed administrative procedures for monitoring and compliance activities, including the roles and specific responsibilities of applicable staff, and the use of outside consultants. The County's "DataEase" computerized tracking system continuously tracks cases from initial application, to approval, to reporting, and to final compliance.

Among other things, Santa Barbara County's procedures provide for the formal exemption of qualifying minor projects from monitoring requirements. The manual includes standard administrative forms as well.

The City of Santa Maria

Santa Maria amended its adopted CEQA procedures to establish a general mitigation monitoring system. Environmental mitigation measures imposed by the city are monitored through the permit and plan check process. Santa Maria's system provides a written record of mitigation without necessitating major changes to city practices.

The key to this system is a checklist that individually identifies the mitigation measures to be monitored for a given project as well as the city department responsible for monitoring each measure. Measures are checked off when they are incorporated into project design and when they have been implemented. Monitoring generally takes place during plan check and project inspection.

On-going measures which will require monitoring over a longer period are also handled through a checklist. Projects are inspected or the developer is required to submit progress reports periodically until implementation is complete. The city makes the final verification of the adequacy of the measure before signing off on its completeness.

Fees are collected from project proponents to pay for monitoring programs. Fees are limited to actual cost, and any excess is refunded to the proponent. If consultants are needed, they are hired by the city and their cost paid by the project proponent. A copy of the city's program is included in the appendix.

South Coast Air Quality Management District

The South Coast AQMD has adopted extensive guidelines covering all aspects of CEQA compliance. The 1993 edition of the District's "CEQA Air Quality Management Handbook" contains detailed advice for establishing monitoring programs.

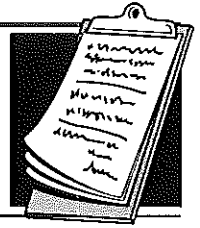
The District recommends that programs do the following:

- 1** Communicate mitigation measures and reporting responsibilities to the applicant clearly.
- 2** Identify the agency which will be responsible for monitoring each mitigation measure.
- 3** Identify the time frame within which each measure is to be completed and during which monitoring will occur.
- 4** Establish specific standards or criteria for completion of each mitigation measure.
- 5** Identify remedial measures which will be imposed in case of non-compliance.
- 6** Include a mechanism for periodic reporting.

The District's handbook also recommends that monitoring should be linked to a specific point in the development process, such as issuance of a grading permit, occupancy permit, building permit, or construction inspection, and that mitigation measures should be limited to those which are legally enforceable. Suggested enforcement tools include conditions of approval, impact fees, improvement security, development agreements, Memoranda of Understanding, and recorded "Conditions, Covenants, and Restrictions" (CCRs).

An excerpt of the Handbook's chapter on mitigation monitoring is included in the appendix.

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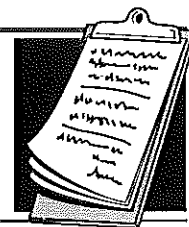
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3 Mitigation Monitoring or Reporting Programs



CEQA requires that each public agency adopt objectives, criteria, and specific procedures to administer its responsibilities under the Act and the CEQA Guidelines (Section 21082). Accordingly, local agencies should revise their adopted CEQA guidelines and procedures as necessary to include the requirements of Section 21081.6.

The task of designing monitoring and reporting programs is the responsibility of the public agency which is approving the project. Although a public agency may delegate this work, the agency cannot escape its responsibility for ensuring the adequacy of the program.

Each city and county may adopt programs which match their unique circumstances. The contents and complexity of the programs may be expected to vary based on the characteristics of the project being approved, the environmental effects being mitigated, and the nature of the mitigation measures themselves. Further, the public agency may choose whether its program will monitor mitigation, report on mitigation, or both.

The statute does not define the terms "reporting" or "monitoring," leaving this to the interpretation of the affected agency. Later in this section, we will offer simple definitions for discussion purposes. In practice, however, there is no clear distinction between monitoring and reporting, and the program best suited to ensuring compliance with mitigation measures will generally involve elements of both. For example, reporting requires the agency to monitor mitigation at some point in time. Likewise, a monitoring program can include regular reports to the decisionmaking body.

Mitigation Measures

Since the purpose of a monitoring or reporting program is to ensure the implementation of

mitigation measures, a quick look at mitigation measures will be the first item in our discussion. Mitigation measures are the specific requirements which will minimize, avoid, rectify, reduce, eliminate, or compensate for significant environmental effects. See Section 15370 of the CEQA Guidelines for a full definition.

A monitoring and reporting program's effectiveness depends in large part upon the quality of the mitigation measures themselves. Poorly drafted measures are not only difficult to implement, they are difficult to report on and monitor.

Here are some suggestions for preparing mitigation measures:

- 1 Certainty:** Avoid using the words "may" or "should" when the intent is to direct some required action. "Will" or "shall" are much better. Avoid measures that are conditioned on feasibility (i.e., required "where feasible") rather than applied directly or at a specified stage in the project.

Measures should be written in clear declaratory language. Specify what is required to be done, how is to be done, when it must be done, and who is responsible for ensuring its completion.

- 2 Performance:** Include specific minimum, measurable performance standards in all quantitative measures, and if possible, contingency plans if the performance standards are not met.
- 3 Authority:** CEQA does not provide independent authority to carry out mitigation (Section 21004). Measures which are not based on some other authority (i.e., zoning code, tree preservation ordinance, development agreement, impact fee ordinance, subdivision ordinance, etc.) are unenforceable. Monitoring or reporting on their implementation would clearly be problematic.

4 Continuity and Consistency: To the extent possible, integrate measures with existing policy and regulatory systems, and inspection or review schedules. Where the mitigation measures are regulatory in nature, for example, design them as conditions of approval within the context of the zoning, subdivision, or other ordinances. Further, mitigation measures must take applicable general plan and specific plan policies into account and not conflict with those policies.

5 Feasibility: Above all, measures must be feasible to undertake and complete. Avoid the trap of imposing mitigation measures that are based upon future activities of uncertain outcome. For example, the court in *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296 overturned the county's negative declaration for a motel project because the county required a study of potential sewage disposal methods rather than actions which would mitigate sewage impacts. A measure that did not mitigate the impact could not be the basis for a finding that impacts were mitigated.

Although infeasibility becomes obvious as the agency attempts to monitor or report on implementation, by that time it is too late. Early in the process of developing mitigation measures, the EIR or negative declaration preparer should consider how implementation of each measure is to be reported on or monitored. This offers a convenient feasibility test.

Reporting

For purposes of simplification, "reporting" may be defined as a written review of mitigation activities that is presented to the approving body by either staff or the project developer. A report may be required at various stages during project implementation and upon completion of the project.

Reporting without detailed monitoring is suited to projects which have readily measurable or quantitative mitigation measures or which already involve regular review. For example, the

annual report on general plan status required under Government Code Section 65400 may serve as the reporting program for a city or county general plan as long as it meets the requirements of Section 21081.6. Reporting is also suited to simple projects where a means of reviewing project compliance already exists, such as issuance of building permits and related inspections.

A program for reporting on the implementation of mitigation measures should contain at least the following components:

- 1** A list of the mitigation measures being reported on.
- 2** Standards for determining compliance with each mitigation measure and the related condition of approval.
- 3** A schedule for making one or more reports to the approving agency regarding the level of compliance of the project with the required mitigation measures and related conditions of approval. The program may set out the stages of the project at which each mitigation measure must be implemented (*Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 49).
- 4** A statement which identifies the person or agency, public or private, responsible for reviewing the project and for preparing and making the report to the agency.

These components may be combined in a checklist, matrix, or other representation of the required mitigation measures or revisions, any related conditions of approval, the persons or agencies responsible for ensuring their completion, and the responsible person's or agency representative's affirmation of completion. In some cases, where mitigation will occur in stages during the project, or a mitigation measure contains more than one part, preparing a checklist for each mitigation measure may be an effective approach.

Monitoring

"Monitoring" can be described as a continuous, ongoing process of project oversight. Moni-

toring, rather than simply reporting, is suited to projects with complex mitigation measures, such as wetlands restoration or archeological protection, which may exceed the expertise of the local agency to oversee, which are expected to be implemented over a period of time, or which require careful implementation to assure compliance.

A program for monitoring the implementation of mitigation measures should contain at least the following components:

- 1 A list of the mitigation measures or revisions and related conditions of approval which have been adopted for the project by the agency.
- 2 A schedule for regularly checking on the project's compliance with the mitigation measures or project revisions and related conditions of approval, including progress toward meeting specified standards, if any. The program may set out the stages of the project at which each mitigation measure must be implemented (*Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 49).
- 3 A means of recording compliance at the time of each check.
- 4 A statement assigning responsibility for monitoring implementation of the mitigation measures and related conditions of approval to specific persons or agencies, public or private.
- 5 If monitoring duties are contracted to private individuals or firms, provisions for ensuring that monitoring reflects the independent judgment of the public agency. Such provisions might include requiring the submittal of regular progress reports to the agency, establishing a mechanism for appealing actions of the contractor to the agency for decision, or selection of the contractor by the agency (as opposed to solely by the applicant). Regardless of whether monitoring is performed by the agency or a contractor, the agency retains the ultimate legal responsibility for satisfying the requirements of section 21081.6.
- 6 Provisions for funding monitoring activities, including the imposition of fees.
- 7 Provisions for responding to a failure to comply with any required mitigation measure (in-

cluding conditions of approval). This might include "stop work" authority, permit revocation proceedings, or civil enforcement procedures. This can also include administrative appeal procedures.

Some agencies prepare a separate worksheet describing each mitigation measure and its monitoring requirements. These worksheets are provided to the monitors.

General Approaches to Reporting and Monitoring

Following are two basic approaches which an agency might use:

- 1 **Jurisdictional Framework:** A standard mitigation monitoring and reporting ordinance or guidelines adopted by the jurisdiction may establish the basis for individually tailored programs. This framework would express the relative roles of involved agencies, staff, and project proponents; establish administrative procedures; lay out a standardized format for reporting or monitoring programs; establish general timetables; and provide or identify enforcement mechanisms. It may also include standard methods of reporting or monitoring for common mitigation measures.

Standardizing the framework for monitoring or reporting programs promotes consistency and thoroughness in reporting or monitoring activities.

- 2 **Project Specific:** Develop a new, specially tailored program for each project which triggers Section 21081.6. Such a program may be imposed under the regulatory authority of the agency. Compliance could be required as a condition of project approval or, if a framework ordinance is in place, by reference to that ordinance.

This may be the best way to approach large and complicated development projects which will have special monitoring requirements. It is useful where a standardized program alone

may be inadequate to such a situation. This approach may also make sense for small cities and counties which adopt EIRs or mitigated negative declarations infrequently.

Regardless of the method chosen, a draft AB 3180 program should be made available to decisionmakers prior to the formal adoption of either a mitigated negative declaration or the EIR-related findings in Section 21081 (a).

Although not required to do so, some agencies choose to circulate the draft program during consultation on the draft environmental document. This allows public and agency comments on the effectiveness of both mitigation measures and the associated monitoring or reporting program. When circulating a draft, the agency should specify that the program is not final and is subject to change prior to adoption.

Ultimately, the agency must enact a program which reflects the mitigation or project revisions adopted as part of the mitigated negative declaration or subject to findings under Section 21081 (a), regardless of what might have been in the draft documents. If mitigation measures are revised, added or dropped prior to approval of the project, the adopted AB 3180 program must reflect those changes.

Program Administration

Project monitors, whether agency staff or contract personnel, should be given clear written guidance regarding the mitigation measures to be monitored and reported on. This is particularly important in those cases, such as where a large private project is involved, the applicant will perform the actual monitoring. Further, when compliance is achieved, there should be a clear "sign off" by the appropriate agency to ensure that this compliance is documented.

Worksheets offer a convenient means of tracking compliance. Worksheets can be used to express: (1) impact being mitigated; (2) mitigation measure for that impact; (3) implementor; (4) monitor; (5) monitoring requirements; (6) frequency of monitoring or reporting; (7) standards

for completion or compliance; and (8) verification of compliance. Some agencies also include a checklist to summarize the monitoring or reporting record.

When the program is a relatively simple one, a checklist rather than a worksheet may suffice to guide inspections, record findings, and certify compliance.

Implementation

In order to maximize efficiency in implementing a monitoring or reporting program, the agency should make every effort to integrate the requirements of the program with its current land use regulations and inspection procedures. This applies whether the program is comprehensive or project specific. As a general rule, the more that mitigation monitoring or reporting programs can utilize existing procedures and requirements, the easier those programs may be to implement. The more that such programs work outside usual procedures, the more expensive and time consuming they may be to implement.

This is not intended to say that a program should monitor or report on zoning or other regulations that are not mitigation measures. While working within the existing regulatory system, the program's scope is limited to mitigation measures resulting from the project's mitigated negative declaration or EIR.

Enforcement

CEQA does not create new authority for agencies to carry out or enforce mitigation measures. Agencies must rely upon the authority conferred by other laws. In the case of a city or county, this would include local zoning, subdivision, and related land use regulations. Typically, enforcement procedures are enacted by ordinance and provide for administrative dispute resolution.

OPR recommends that if a jurisdiction-wide AB 3180 program is adopted, that it contain, or reference other existing regulations which would enforce compliance with the mitigation measures. A jurisdiction-wide program that includes enforce-

ment regulations must be adopted by ordinance in order to be effective. In the absence of a jurisdiction-wide AB 3180 ordinance, individual mitigation monitoring or reporting programs should reference those existing regulations, such as the zoning ordinance, that will provide enforcement.

Cost Recovery

Section 21089 authorizes the lead agency to "charge and collect a reasonable fee from any person proposing a project subject to [CEQA] in order to recover the estimated costs incurred ... for procedures necessary to comply with [CEQA] on the project." This express authority allows the lead agency to levy fees to cover the costs of mitigation monitoring or reporting programs. The fee is limited to the estimated cost of the program, including the agency's administrative costs. Fees may be used to cover the cost of agency staff, as well as the cost of hiring special monitors or consultants, if needed.

Fees for complex AB 3180 programs, such as those involving long-term monitoring or continuous observation over time, are often charged on the basis of time and work. Flat fees are usually

charged when the AB 3180 program involves routine inspections and reporting. In practice, hourly fees and flat fees charged on a sliding scale based on project type or size are equally popular among cities and counties.

Responsible and Trustee Agencies

Lead and responsible agencies may adopt different AB 3180 programs for the same project. This is because the agencies often do not adopt the same set of mitigation measures. In general, when a lead agency approves a project for which an EIR was prepared, it adopts feasible mitigation measures for those portions of the project which it controls or regulates. In turn, the responsible agency adopts only the mitigation measures pertinent to its statutory authority. Under ideal circumstances the programs of the lead and responsible agencies, when taken together, should monitor or report upon all of the adopted mitigation measures and project revisions.

Section 21081.6 does not require agencies to duplicate monitoring programs. Agencies can avoid potential duplication by coordinating their relative roles during the consultation process.